IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10768 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHANBHAI HARIBHAI SOJITRA

Versus

DIRECTOR OF MUNICIPALTIES

Appearance:

1. Special Civil Application No. 10768 of 2002

MR NAVIN PAHVA for M/S THAKKAR ASSOC. for Petitioner Nos. 1-3

MR NAGESH SOOD, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 15/07/2004

ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned AGP, appears and waives service of rule on behalf of the respondent. With the consent of the parties, the matter is taken up for the final hearing today.

2. What is challenged in the present petition under Articles 226 and 227 of the Constitution of India is the order dated 03/07-10-2002 passed by the respondent removing the petitioners as the Councillors of the Amreli Municipality.

3. The petitioners were the Councillors of the Amreli Nagarpalika. A show-cause notice dated 02-01-2001 came to be issued upon them by the respondent Directorate of the Municipalities under Section 37 of the Gujarat Municipalities Act, 1963 (for short 'the Municipalities Act') and the petitioners were directed to show-causes why they should not be removed as the Councillors of the Nagarpalika alleging inter alia that though the land in question was reserved for park, a resolution came to be passed for construction of shopping center and the petitioners signed in favour of the said resolution No.91 dated 23-10-1997. It was further alleged in the said show-cause notice that before construction of shopping center prior permission of the State Government was not obtained. Even for construction of the shopping center when the tenders were invited, wide publicity in the newspaper having wide circulation in the State of Gujarat and Saurashtra was not given and the tenders were invited only by giving advertisement in local newspaper and that even for the purpose of inviting tenders no resolution was passed. It was further alleged in the said show-cause notice that even while allotting / selling shops in the shopping center, the upset value was not fixed after getting the price fixed by the Dy. Town Planner, Junagadh. Thus, they have acted contrary to the rules and regulations. After considering the reply submitted on behalf of the petitioners, the respondent No.1 - Director of Municipalities by his order dated 03/07-10-2002 removed the petitioners as the Councillors of Amreli Nagarpalika by holding that the land which was reserved for town hall and garden the municipality has constructed a shopping center and for that a resolution came to be passed on 23-10-1997 for construction of the shopping center. The said action and resolution was contrary to the rules and regulations and before allowing to put up construction prior permission of the government was not obtained. It was further held by the respondent No.1 that without obtaining prior permission of the State Government not only the shopping center is constructed but payment is already made to the contractor. Thus, they have spent the amount illegally. Being aggrieved and dissatisfied with the aforesaid order dated 03/07-10-2002 passed by the Director of Municipalities removing the petitioners as Councillors of the Amreli Nagarpalika, the present petition has been preferred.

4. This Court has issued notice on 21-10-2002 and granted status-quo and the said order of status-quo has been continued from time to time till date. The said order of status-quo clearly states that if the petitioners are in charge, they may continue to hold the charge, but they may not take any policy decision in connection with the affairs of the municipality. The said order has been continued till date.

5. Mr.Navin Pahwa, learned advocate for the petitioners, submitted that a petition being S.C.A. No.8803 of 1997 was filed before this Court by way of Public Interest Litigation preventing the Amreli Nagarpalika from taking any steps in converting the area earmarked for a park into a commercial complex. The said petition came to be dismissed by the Division Bench of this Court (Coram : K. Sreedharan, CJ and M.S.Shah, J) by their judgment and order dated 24-12-1997 holding that the Municipality has constructed the shopping center for meeting with the expenses for carrying out the statutory obligations to the inhabitants of the area and that a construction of a shopping complex by a Nagarpalika is certainly a public purpose. Under the circumstances, Mr.Pahwa submitted that in view of the aforesaid judgment and order dated 24-12-1997, the respondent No.1 could not have removed the petitioners on the ground that the petitioners have supported the resolution by which the land in question was converted for construction of shopping center instead of park. According to Mr.Pahwa, the action of respondent No.1 is to overreach the process and order passed by this Court in the aforesaid petition and, therefore, he requested to allow the present petition and to quash and set aside the order 03/07-10-2002 passed by the respondent No.1 removing the petitioners as the Councillors of the Amreli Nagarpalika.

6. Mr.Nagesh Sood, learned AGP on behalf of the respondent, on the other hand, submitted that it is true that the controversy which is set at knought by this Court in its earlier judgment and order dated 24-12-1997 passed in S.C.A. No.8803 of 1997 could not have re-opened by the respondent. However, he has taken this Court to the show-cause notice issued by the respondent upon the petitioners and argued that it was not the only ground on which the action was proposed against the petitioners. Mr.Sood further submitted that other allegations against the petitioners are that the tenders were not invited by giving wide publicity in the newspapers having circulation in the State of Gujarat and Saurashtra and that the tenders were invited in the local

newspaper and the shops in question are sold without even fixing the upset price and getting the opinion with regard to the market price from the Dy. Town Planner, Junagadh. Considering the aforesaid allegations there is a huge loss caused to the Municipality and by selling and allotting the shops of the shopping center much more amount could have been recovered by the Municipality. Mr.Sood, requested that the grounds which are set out in the show-cause notice are somewhat different than the controversy raised in the aforesaid petition being S.C.A. No.8803 of 1997. Therefore, requested to dismiss the present petition.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. It is true that in the show-cause notice other grounds were also made with regard to the allotment and selling the shops of the shopping center and also constructing the shopping center inviting tenders without giving advertisement in the newspaper having wide circulation in the State of Gujarat as well as Saurashtra and that selling / allotting the shops without fixing the upset price and fixing upset price without valuation fixed by the Dy. Town Planner, Junagadh. However, from the bare reading of the impugned order dated 03/07-10-2003, it seems that the main finding given by the respondent while passing the impugned order is with regard to putting up a construction of shopping center in the land which was earmarked for garden and town hall. So far as the same is concerned, in view of the aforesaid judgment and order dated 24-12-1997 passed by the Division Bench of this Court in S.C.A. No.8803 of 1997, it was not open for the respondent to remove the petitioners on the same ground which is negatived by this Court in the aforesaid judgment. Meaning thereby this court has approved the action of the Municipality in constructing the shopping center in the land in question which was reserved for park. However, in view of the fact that there are other allegations in the show-cause notice also there is some reference in the order but there is no specific finding given by the respondent authority while removing the petitioners as Councillors. There is no specific finding and the discussions with regard to allegations of not inviting the tenders by giving advertisement in the newspapers having wide circulation in the Gujarat and Saurashtra and not allotting the shops of the shopping center by fixing the upset price after obtaining necessary opinion and/or getting upset price fixed by the Dy. Town Planner, Junagadh and also the loss caused to the Nagarpalika.

The allegation seem to be that by not following due procedure there is a huge loss to the Municipality.

9. However, in view of the fact that there is no specific finding and discussions by the respondent authority with regard to the aforesaid allegation and other allegations in the show-cause notice by allowing the present petition and quashing and setting aside the order dated 03/07-10-2002 passed by the respondent - Director of Municipalities, the matter is required to be remanded back to the respondent authority for deciding the show-cause notices of December 2000 and dated 02-01-2001 (Annexure-B Colly. to the petition) afresh in accordance with law and on merits by directing the respondent to give specific finding with regard to the allegations leveled in the said show-cause notices.

10. For the reasons stated above, the petition is partly allowed. The impugned order dated 03/07-10-2002 passed by the respondent No.1 - Director of Municipalities removing the petitioners as Councillors of the Amreli Municipality is hereby quashed and set aside. The matter is remanded to the respondent No.1 - Director of Municipalities for deciding and disposing of the show-cause notices of December 2000 and dated 02-01-2001 (Annexure-B Colly. to the petition), issued upon the petitioners under Section 37 of the Gujarat Municipalities Act, afresh and in accordance with law and on its own merits, after giving an opportunity of hearing to the petitioners and to give a specific finding with regard to the allegations leveled in the aforesaid show-cause notices. It is further directed that it will not be open for the respondent to take action against the petitioners on the ground that the land which was earmarked / reserved for town hall / park, the shopping center is constructed. So far as this point is concerned, the action of Municipality for construction of shopping center is approved in the aforesaid petition.

11. The aforesaid exercise of taking a decision of the show-cause notice afresh is required to be completed by the respondent within a period of 03 (three) months from the date of receipt of this order. Till the appropriate decision is taken by the respondent, ad-interim relief granted by this Court on 21-10-2002 is directed to be continued. Meaning thereby that if the petitioners are in charge, they may continue to hold the charge, but they may not take any policy decision in connection with the affairs of the Municipality.

12. Rule is made absolute to the aforesaid extent.

No order as to costs. Direct service permitted.

[M.R.SHAH, J]

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'Bhavesh'